

softener is an essential element of the claimed invention, the specific structure of the fabric softener is not specified in independent claim 1.

The Restriction Requirement

The restriction requirement imposed in the Action mailed February 28, 2001, asserts that the claims of the present application must be restricted not only amongst seven identified groups of fabric softeners that appear in the dependent claims (Groups I-VII), but amongst ten groups of phase stabilizers (Groups A-J) that are identified as "optional" elements of independent claim 1. It is asserted that neither Groups I-VII nor Groups A-J relate to a single inventive concept under PCT Rule 13.1 because under PCT Rule 13.2 they lack the same or corresponding special technical feature. More specifically, it is alleged that the fabric softeners and phase stabilizers lack common structural features and do not make a contribution over the art. It is further alleged that any technical feature which unites the inventions does not make a contribution over the prior art in view of the "X" references cited in the PCT Search Report.

Provisional Election with Traversal

For the reasons that follow, Applicants disagree with the allegations contained in the Action and provisionally elect Group VII from the groups of defined fabric softeners and Group A from the groups of defined phase stabilizers. This provisional election is made with the following traversal of the restriction requirement and Applicants respectfully request reconsideration of the restriction requirement under 37 C.F.R. §1.143 and M.P.E.P. §1893.03(d).

1. Claims Share Special Technical Features

As noted above, the claimed fabric softening compositions include a fabric softener generally, a principal solvent having a recited ClogP value, water and a relatively high level of electrolyte that gives the composition (a) a lower dilution viscosity, (b) the same or better stability with less principal solvent, and/or (c) the use of principal solvents with a Clog P outside the range of about 0.15 to about 0.64.

The special technical feature that is common to claim 1 and all of the allegedly distinct inventions is the relatively high level of electrolyte and the improvement(s) in the composition that is (are) derived from the use of such a high level of electrolyte. The Action alleges that although such a technical feature might unite the inventions, it fails to make a contribution over the art, namely, the "X" reference in the PCT Search Report. Applicants respectfully disagree. There is no disclosure in the "X" reference cited in the PCT Search Report (JP 63 223098) that a clear or translucent fabric softening composition may be obtained with a composition having the high level of electrolyte recited in Applicants' claims, nor does the reference disclose that such a composition would have one or more of the recited improvements that are derived from the

presence of such a high level of electrolyte. Absent such a disclosure, the special technical feature uniting the present claims does in fact make a contribution over the prior art.

According to M.P.E.P. §1850, The Requirement for "Unity of Invention", *A. Independent and Dependent Claims*,

Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims.

If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention. Equally, no problem arises in the case of a genus/species situation where the genus claims avoids the prior art.

Because independent claim 1 recites a common special technical feature that unites the allegedly distinct inventions and defines them over the prior art there is no lack of unity of invention within claim 1 or any of the claims that depend therefrom. This includes claims 15 and 16 that recite the various fabric softeners that have been relied upon by the Office in defining Groups I-VII. Reconsideration of the restriction amongst Groups I-VII is respectfully requested.

In addition, the recitation in claim 1 of an optional phase stabilizer in Markush group format does not alter or modify the fact that claim 1 enjoys unity of invention by virtue of its recitation of the high level of electrolyte and the various improvements that may be derived from the use of such levels of electrolyte. The recitation of an "optional" component in claim 1 is no different from reciting that component in a subsequent claim depending from claim 1. Therefore, when the essential elements of a claim define the invention over the art, the recitation of "optional" elements in that claim is immaterial to a determination of unity of invention. In the present case, because claim 1 recites a common special technical feature that unites the allegedly distinct inventions (Groups A-J) and defines them over the prior art, there is no a lack of unity of invention. Reconsideration of the restriction amongst Groups A-J is respectfully requested.

2. *Restrictions Improper under Markush Practice Guidelines*

If the restriction amongst Groups A-J is to be maintained in light of the common special technical features identified above, Applicants would further request reconsideration of the restriction requirement amongst these Groups on the basis that they share the same or corresponding special technical feature as defined in PCT Rule 13.2 for purposes of Markush practice. M.P.E.P. §1850, *D. "Markush Practice"* recites that when components are claimed in the alternative in a Markush grouping:

...the requirement of a technical interrelationship and the same or corresponding special technical features as defined in PCT Rule 13.2, shall be considered to be met when the alternatives are of a similar nature.

When the Markush grouping is for alternatives of chemical compounds, they shall be regarded as being of a similar nature where the following criteria are fulfilled:

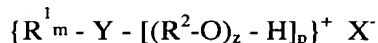
- (A) All alternatives have a common property or activity; and
- (B) (1) A common structure is present, i.e. a significant structural element is shared by all of the alternatives; or
- (C) (2) In cases where the common structure cannot be the unifying criteria, all alternatives belong to a recognized class of chemical compounds in the art to which the invention pertains.

...the words "recognized class of chemical compounds" means that there is an expectation from the knowledge in the art that members of the class will behave in the same way in the context of the claimed invention.

While the Action defines Groups A-J in reference to structures and features that are recited in claims 29, 30, 31, and 32, it should be noted that each of these structures and features are recited within the Markush group of claim 1 that concerns the optional phase stabilizer. Each of the compounds defined in Groups A-J has the common property or activity of providing improved phase stability to the composition. Further, it is asserted that although not all of these materials may share a common structure, the presence of both hydrophobic and hydrophilic moieties in the materials of Groups A-J will give rise to the expectation that each will function as a phase stabilizer in the claimed compositions. As such, each of the allegedly distinct inventions defined in Groups A-J satisfy the requirements for having the same or corresponding special technical feature as defined in PCT Rule 13.2. M.P.E.P. §1850.

If based on the discussion above the restriction is maintained with respect to Groups A-J, Applicants further request reconsideration of the restriction amongst Groups F-J on the grounds that these Groups share the same or corresponding special technical feature as defined in PCT Rule 13.2. M.P.E.P. §1850.

Groups F-J are directed to various optional phase stabilizers that are defined by a common structure, namely, the formula:



where Y contains a "B" group, and where each B is selected from the following groups: -O-, -NA-, -NA₂, -C(O)O-, and -C(O)N(A)-. M.P.E.P §1850, states that

...the words "significant structural element is shared by all of the alternatives" refer to cases where the compounds share a common chemical structure which occupies a large portion of their structures....

The claims define that R¹ can be a saturated or unsaturated, primary, secondary or branched hydrocarbon chain of up to 22 carbon atoms, z can be up to 50 and p can be 1 or 2. As such, a

large portion of the chemical structure of the compounds defined by this formula will be common to all of the compounds in Groups F-J. Therefore, each of the alternative compounds in Groups F-J share a common property or activity, namely, providing improved phase stability, and share common chemical structure over a larger portion of their structures. Under the guidelines set forth in M.P.E.P. §1850, the alternative compounds in Groups F-J share a common technical feature as defined in PCT Rule 13.2.

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In summary, the claims of the present application have unity of invention due to the fact that they are all directed to clear or translucent fabric softening compositions that contain a high level of electrolyte and that have one or more improved characteristics that are derived from the use of such levels of electrolyte. These special technical features are common to all of the claims and define the invention over the prior art. The recitation of different fabric softeners in dependent claims and the recitation of various phase stabilizers as optional components of claim 1 do not alter or modify these shared technical features. Applicants respectfully request reconsideration of the restriction requirements imposed based on Groups I-VII and Groups A-J.

To the extent that the restriction requirement is to be maintained over the technical features, identified above, Applicants separately request reconsideration of the restriction based upon the Markush groupings associated with Groups A-J and Groups F-J.

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In light of the above remarks, Applicants respectfully request that the Examiner reconsider and withdrawal the restriction requirement and proceed with the examination of all claims in the present application. Early and favorable action in the case is respectfully requested.

Respectfully submitted,


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